

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

No. 08-20022

Plaintiff,

District Judge Gerald E. Rosen

vs.

Magistrate Judge R. Steven Whalen

LAURYE LASHAWN MITCHELL,

Defendant.

/

ORDER REGARDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE

On June 1, 2010, the government filed a Motion to Have the Court Waive the Attorney/Client Privilege [Docket #29]. Defendant, who had filed a *pro se* motion under 28 U.S.C. § 2255, appeared without counsel at the motion hearing on June 22, 2010.

Although it appears to the Court that under *In re Lott*, 424 F.3d 446 (6th Cir. 2005), Defendant has implicitly, albeit partially, waived the privilege as to attorney-client communications related to Issue IV of his motion, it was apparent at the hearing that he was unclear about the legal concepts regarding implied waiver. It was also clear to the Court—and the government agrees—that an evidentiary hearing is required on Issue IV. Accordingly, the Court appointed counsel to represent the Defendant under the Criminal Justice Act and took the government's motion to waive privilege under advisement. Defendant's counsel has now filed an appearance.

Therefore, Defendant's counsel is directed to file either a concurrence or a

response in opposition to the government's motion [Docket #29] within seven days of the date of this Order. An evidentiary hearing on Issue IV of the underlying § 2255 motion will be set at a later date.

IT IS SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: June 24, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on June 24, 2010.

S/G. Wilson
Judicial Assistant